Supreme Court, U.S.
FILED

98 1296 OCT 22 1998

OFFICE OF THE CLERK

No. 98 -___

In The

**Supreme Court of the United States**

October Term, 1998

JOANNE BERNARDO,

*Petitioner,*

v.

KENNETH S. APFER, formerly, Shirley S. Chater,
Commissioner of Social Security,

*Respondent.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeal For The Second Circuit**

# PETITION FOR WRIT OF CERTIORARI

FRANK A. DELLE DONNE
*Counsel of Record*
342 Madison Avenue, Suite 1417
New York, NY 10173
(212) 599-3844

2188

## QUESTIONS PRESENTED FOR REVIEW

I. Whether the sixty day limitations period for Federal Court review of Social Security Disability Claims should be equitably tolled to provide alternative federal court jurisdiction on Due Process grounds when the Social Security Administration sent notice to claimant's counsel differing from the notice sent directly to claimant thereby misleading counsel to act in a manner inconsistent with the proper procedure.

II. Whether Petitioner in a Social Security Disability Claim is entitled to an Order to compel the Commissioner to render a decision on a request for extension of filing time for review in Federal Court.

## PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

## PETITION FOR WRIT OF CERTIORARI

Petitioner, Joanne Bernardo, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit dated June 12, 1998.

## OPINIONS BELOW

The Judgment of the United States Court of Appeals for the Second Circuit dated June 12, 1998 is not reported, but is reprinted in the Appendix at page 2. (A-2). The Opinion of the United States District Court for the Eastern District of New York is not reported, but is reprinted in the Appendix at page 6 (A-6).

## JURISDICTION

The judgment and published opinion of the United States Court of Appeals for the Second Circuit is dated June 12, 1998. A timely Petition for Rehearing was denied on July 24, 1998(A-1). This petition is filed within 90 days after that last date and is timely under Rule 13 of the Rules of the Supreme Court. This Court has jurisdiction pursuant to 28 U.S.C. § 1254.

## STATUTES AND RULES INVOLVED

This case involves 42 U.S.C. § 405(g); 20 CFR 404.1715 and 20 CFR 404.982 which are reprinted in the Appendix.

## STATEMENT OF THE CASE

On May 17, 1994, Petitioner through her original counsel, filed an application for Social Security Disability Insurance Benefits for severe carpal tunnel syndrome in both hands. Subsequently, Petitioner also included a disability claim based on mental illness, anxiety and depression. The claim was denied and moved through the Administrative appeal process where the Appeals Council eventually

denied further review on March 5, 1996. Denial notices were sent to original counsel and Petitioner. Petitioner's original counsel withdrew from the matter and declined to appeal to the United States District Court as allowed under 42 U.S.C. 405(g). At this point there was fourteen days remaining to file the appeal in Federal District Court. Petitioner retained new counsel, but due to her mental and physical state, she was unable to properly maintain her correspondence. She was also unable to explain the status of her case to her new counsel. She would go off on tangents, get extremely angry, bring up irrelevant matters, start to cry, and was virtually impossible to communicate with. She has breast cancer and is undergoing chemotherapy and radiation treatment in addition to her extreme carpal tunnel syndrome and depression.

Petitioner's new counsel immediately telephoned former counsel and requested the file. There was no return call. Petitioner's new counsel wrote two letters requesting the file and provided a signed authorization. There was again no response. Petitioner's new counsel then telephoned the Administration to ascertain the status of the case. The clerk indicated that an ALJ had rendered a recent denial and that the matter should be appealed to the Appeals Council. The clerk put a hand written internal control number on the top of an HA-520-U5 Appeals Council form and sent the form to claimant's new counsel who had Petitioner sign it. (A-14). The HA-520-U5 form was filed with the Appeals Council and the Administration within the 60 day time frame. Unfortunately and unbeknownst to Petitioner's new counsel, the Appeals Council had already rejected the claim.

On May 29, 1996 it was learned that a request for review had already been filed with the Appeals Council which was denied on March 5, 1996. On June 3, 1996, Petitioner's new counsel commenced this action in the United States District Court for the Eastern District of New York some twenty days after expiration of the sixty days.

Still not receiving any information or a return call from the former attorneys, on June 3 and June 11, 1996, Petitioner filed and faxed to the Administration's Mr. Laub a request for extension of time explaining the circumstances and also requested a copy of the denial letter which was needed for proper service. The denial letter was faxed to Petitioner's new counsel on June 20, 1996. However, no decision has ever been made on the request for extension of time.

On November 19, 1996, the Honorable Jack B. Weinstein granted respondent's motion for dismissal pursuant to Rule 12(b)(1) and Rule 56. The dismissal was based on an affidavit from Mr. Laub that the action in the district court was late and that he was unaware of any request for an extension of time even though a request for an extension of time was faxed to his desk. Appellant timely filed for reconsideration of the dismissal and moved the Court to issue a mandamus Order to compel a decision on the request for an extension of time. On May 12, 1997, Judge Weinstein granted reconsideration and Ordered that the matter be reargued. On September 25, 1997, Judge Weinstein ordered the case be dismissed because jurisdiction was lacking with the sixty days having elapsed. On June 12, 1998 the United States Court of Appeals for the Second Circuit affirmed the dismissal. (A-2). Rehearing was denied on July 24, 1998. (A-1).

## REASONS FOR GRANTING THE WRIT

### I. Petitioner's Due Process rights have been violated because the Administration sent Petitioner's new counsel notice to file in the Appeal's Council which superceded the prior notice sent to claimant to file in the District Court

The sixty day limitations period prescribed by 42 U.S.C. § 405(g) is not jurisdictional, but is a period of limitations contained in a statute that is meant to be unusually protective of claimants. *Bowen v. City of New York*, 476 U.S. 467, 479 (1986), 106 S.Ct. 2022, 2029-2030; *See Also, Aschettino v. Sullivan*, 724 F.Supp. 1116 (W.D.N.Y. 1989). A traditional equitable tolling principle is to be applied in situations

where the sixty day filing limitations period is not met provided that such application remains consistent with the overall congressional intent. *City of New York*, 476 U.S. at 479-480, 106 S.Ct. at 2030. Congress has authorized the Secretary to allow further time regarding the sixty day limitations prescribed by 42 U.S.C. § 405(g) and in most cases the Secretary will make that determination. *City of New York*, 476 U.S. at 479, 106 S.Ct. at 2030. However, there are circumstances where deference to the agency's judgment is inappropriate. *City of New York*, 476 U.S. at 479, 106 S.Ct. at 2030.

The Commissioner's own regulations state that notice of administrative action and requests for information shall be sent to the claimant's representative which shall have the same force and effect as if sent to claimant. 20 CFR § 404.1715. (A-12). This regulation creates a mutual understanding between the claimant and the Administration that claimant's counsel can and must act on the notice it receives directly from the Administration.

In the case at bar, appellant's due process rights have been violated. The Administration's telephone instructions regarding this case and the actual sending of the HA-520-U5 form to Petitioner's new counsel noticing him to file it with the Appeals Council has the same force and effect as any notice to file in the District Court that was sent to Petitioner. (A-14). Petitioner's counsel followed the notice given him by the Administration. To the extent the Administration argues this claim was filed late in the District Court, Petitioner's Due Process rights have been violated because of misleading notice. The sixty day period of limitations provided by 42. U.S.C. 405(g) should be equitably tolled or alternatively, the *dual noticing* provides another jurisdictional basis in the District Court based on denial of due process for the Commissioner breaching the mutually explicit understanding for claimant's counsel to rely on direct notice from the Administration.

Petitioner's new counsel is not required to go physically to the Administration to get the file as the Second Circuit held here (A-4). Rather, petitioner's new counsel was correct in telephoning the

Administration as all the denial notices expressly instruct should questions arise. Accordingly, due to the high volume of social security disability cases dealing with some incapacitated claimants, due process concerns regarding counsel following Administration notice as instructed, attorneys withdrawing before District Court review, and the Second Circuit's nonuniformity with the Third Circuit regarding notice to claimant's counsel, *See Penner v. Schweiker*, 701 F.2d 256 (3rd Cir. 1983), Petitioner respectfully requests that review be granted.

**II. Petitioner is entitled to an Order to Compel the Commissioner to render a *decision* on the request for extension of filing time.**

Appellant is entitled to a writ of mandamus or similar relief to compel the Commissioner to render a *decision* on the request to extend the filing time. The Administration is required at the very least to consider applications or extensions of time regarding the sixty day limitations period. *20 CFR § 404.982.* The Secretaries regulations state that in determining whether good cause exists to miss a filing deadline **"we consider"** inability to collect necessary information, mistake, misinformation given by the Administration, a timely filing going to the wrong government agency, and a request for information with a filing in the district court within thirty days of receipt of the information. *See 20 CFR § 404.911.* These regulations create a mutually explicit understanding that the administration will at the very least consider whether an extension of time should be permitted.

In the case at bar, the Second Circuit held that the request for extension of time was "somewhat ambiguous". (A-4). Apart from the Second Circuit's clear knowledge as to what it was, this determination on sufficiency of the request for extension of time is for the Commissioner to make- not the Courts. Accordingly, the Second Circuit erred in its holding on the mandamus question. For the foregoing due process concerns, the petition for the writ of certiorari should be granted.

Respectfully submitted,
FRANK A. DELLE DONNE
*Attorney for Petitioner*
342 Madison Avenue, Suite 1417
New York, NY 10173

DATED: February 10, 1999

# UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

CAROLYN CLARK CAMPBELL
CLERK

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 24th day of July one thousand nine hundred and ninety-eight

Present:

Hon. James L. Oakes
Hon. Thomas J. Meskill
Hon. Jose A. Cabranes
CIRCUIT JUDGES

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Joanne Bernardo,
Plaintiff-Appellant,

v. Docket No. 96-6324

Shirley S. Chater, Commissioner of Social Security,
Defendant-Appellee.

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A Petition for rehearing having been filed herein by Plaintiff-Appellant Joanne Bernardo, Upon consideration thereof, it is Ordered that said petition be and it hereby is DENIED.

FOR THE COURT
CAROLYN CLARK CAMPBELL, Clerk

By: Beth J. Meador,
Administrative Attorney

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 12th day of June one thousand nine hundred and ninety-eight.

PRESENT:

JAMES L. OAKES,
THOMAS J. MESKILL,
JOSE A. CABRANES.
*Circuit Judges.*

JOANNE BERNARDO,

Plaintiff-Appellant,

V. No. 96-6324

SHIRLEY S. CHATER. Commissioner of Social Security,

Defendant-Appellee.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York Jack B. Weinstein, Judge), and was argued by counsel.

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED,
ADJUDGED, AND DECREED that the judgments of the district court are AFFIRMED.

Plaintiff-appellant Joanne Bernardo appeals from the district court's judgments granting defendant Commissioner of Social Security's motion to dismiss her claim for Social Security disability insurance benefits, and denying plaintiff's motion for reconsideration. She argues: (1) the district court erred by refusing to equitably toll the statute of limitations set forth in 42 U.S.C. § 405(g), which requires a claimant to bring a cause of action in district court within 60 days of a final denial of disability benefits; (2) she is entitled to a writ of mandamus from this Court compelling the Commissioner of Social Security to render a decision on her request for an extension of the statute of limitations; and (3) her due process rights were violated when the United States Attorney's Office obtained information from the attorney who had represented Bernardo earlier in these proceedings. These arguments are without merit.

We review the district court's refusal to toll the statute of limitations under § 405(g) for abuse of discretion. *See Dixon v. Shalala*, 54 F.3d 1019, 1031 (2d Cir. 1995). This case clearly does not present circumstances that would qualify it as one of those "rare case[s]," *Bowen v. City of New York*, 476 U.S. 467, 481 (1986), in which tolling would be appropriate. The Commissioner fully complied with notice requirements by disclosing the applicable statute of limitations to the attorney who represented Bernardo at the time of the Appeals Council's decision. Moreover, plaintiff was personally aware of the deadline but allegedly did not inform her present counsel. Although Bernardo's present counsel complains that he had difficulty obtaining Bernardo's file from her prior counsel and that he was misled regarding the status of the case during a

telephone conversation with the Social Security Administration ("SSA"), the proper information would have been readily available to counsel had he gone to the SSA office. Under these circumstances, we cannot say that the district court abused its discretion by refusing to toll the statute of limitations.

Appellant argues that the Commissioner's failure to respond to her request for an extension of time warrants the issuance of a writ of mandamus compelling the Commissioner to do so. "The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations." Kerr *v. United States Dist. Ct. for the N. Dist. of Cal,* 426 U.S. 394, 402 (1976). Although the Commissioner is required to respond to requests for extensions of time, *see 20* C.F.R. § 404.982, in light of the fact that the letters from Bernardo's counsel seeking an extension of time were somewhat ambiguous regarding the nature of the relief requested and the reasons such relief was warranted, we are not persuaded that this case presents an "extraordinary situation[]" requiring the issuance of a writ of mandamus.

Finally, appellant-claims that her due process rights were violated when the United States Attorney's Office obtained information from her former attorney. Although communications between an attorney and his client are ordinarily privileged, it is also the case that "a lawyer may reveal confidences or secrets necessary to defend himself against an accusation of wrongful conduct." *Meyerhofer v. Empire Fire and Marine Ins. Co.,* 497 F.2d 1190, 1194-95 (2d Cir. 1974) (internal quotation marks omitted). Here, Bernardo had argued before the district court that her failure to timely appeal was based, in part, on her prior attorney's negligence in responding to her present counsel's request for her files. The materials disclosed by Bernardo's original counsel were merely intended to rebut this charge by reflecting the nature of his correspondence with Bernardo and her subsequently retained counsel. This was an "appropriate disclosure," *Meyerhofer,* 497 F.2d at 1195, under the circumstances presented, and provides no valid basis for reversal.

We have considered all of appellant's arguments, and find them to be without merit.

For the Court,
George Lange III, Clerk

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

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CV 96-2785

JOANNE BERNARDO,

Plaintiff,

United States Courthouse

Brooklyn,
New York

COMMISSIONER SHIRLEY CHATER,
Defendant.

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September 25, 1997
10:00 o'clock a.m.

TRANSCRIPT OF MOTION
BEFORE THE HONORABLE JACK
B. WEINSTEIN, UNITED STATES
DISTRICT JUDGE.

APPEARANCES: FRANK DELLE DONNE, ESQ.,
342 Madison Avenue, Suite 1417
New York, NY 10173, (212) 599-3844, For the Plaintiff
MICHELLE PEREZ, ESQ.,
225 Cadman Plaza East, Brooklyn, New York 1120, (718) 330-7687, For the Defendant.

Court Reporter: Anthony M. Mancuso

Proceedings recorded by mechanical stenography, transcript ,produced by CAT.

(Case called; both sides ready.)

THE COURT: Yes.

MR. DELLE DONNE: Your Honor, this is a motion for reconsideration from your Honor's prior dismissal of a Social Security benefits case.

We feel that the action -- you should allow the action to continue, because there were some mistakes in myself obtaining the files, and we did miss the sixty-day deadline. But what we did was, within the sixty days, we sent a form to the appeals counsel to have the matter appealed there.

What I was unaware of was that there was a prior appeal there in the appeals council. So, we contacted within the sixty days; we just sent the information to the wrong governmental department, let's say, rather than here in the district court, where it should have been.

The files were in another attorney's office. I tried to call him, and I wrote the other attorney a letter indicating that we had seven or 10 days or so to get the thing filed, please send me the file. I didn't get a response from him at that point, so I called the Social Security Administration, and they told me to fill out form HA-520, which we did, and we sent that both to the Social Security office and the appeals council within the sixty days.

Also, what I was relying on from the initial ALJ's decision was an undated letter, which I believe I submitted to your Honor.

THE COURT: Yes, I'm aware of that.

MR. DELLE-DONNE: It didn't have a date on it. That's what I was acting on. I did exactly what that letter told me to do. That's why we filed the form with the appeals council.

When it was later learned -- when I got the other documents -- that there was an appeal already, we filed here the district court. We realized it was late.

MS. PEREZ: Your Honor, counsel's failure to file on time is not enough base to overturn the order that was issued here.

What's undisputed is that the plaintiff Joanne Bernardo herself knew that she had sixty days, that is, until May 3, to commence this action. That was admitted at the last

conference we had before your Honor with Mr. DelleDonne.

They are not contesting that she received the appeals council's letter from the administration. She had that letter. And that letter specifically told her she had sixty days to commence an action.

In addition, the attorneys that she had retained during the administrative appeal had sent her two letters, on

March 18 and then on April 9, advising her, again, the time frame to commence an action in district court.

The April 9 letter is particularly relevant, because it was sent certified mail, return receipt, signed none other than by Joanne Bernardo herself. She knew she had until May 3 to file a complaint in district court. She didn't do this. Her failure to relay this information to her attorney is her problem. That's not enough basis to overturn an order already dismissing the case. She didn't comply with the regulations.

THE COURT: I'm afraid that's the case. This is jurisdictional. The case is dismissed.

However, should you wish to go up on appeal, I'll Make a further finding, since you have now briefed the issues of the merits. There is merit to the plaintiff's position.

The court would have remanded the matter to the defendant for further hearings by the administrative law judge on the issue of disability because of carpal tunnel.

It is true that the original medical report suggested that she would not be completely disabled. But a subsequent letter and subsequent medical research has shown that this is

a more difficult syndrome than many doctors had originally thought, so that it would have been an appropriate case for remand.

MR. DELLE DONNE: One other thing. Ms. Bernardo, she was diagnosed with severe depression and anxiety, so Ms. Perez said she knew what she had to do and so on. The fact That she was disabled due to this depression is uncontroverted now. We never disputed the fact that that letter was sent to her or she got that letter. What we are saying is, there was another attorney involved here, also. I didn't have the papers when when it was my time to move.

THE COURT: I'm not being critical of you. I'm not blaming anybody. But I don't think that there's a jurisdictional basis for a finding in favor of the plaintiff I think I have to dismiss it. Were I not forced to dismiss it, I would have remanded it. Take it up on appeal. If they can figure out a way to help you, I'll be happy to see it remanded.

MR. DELLE DONNE: We've also sought to amend the complaint to seek mandamus jurisdiction.

THE COURT: What do you mean by "mandamus"?

MR. DELLE DONNE: We sent an application for a request for extension of time to Mr. Laub in June of 1996, and he has not decided the application. We have not heard from him one way or the other.

THE COURT: I don't believe that matter is one that I can decide.

MS. PEREZ: There's no need to amend a complaint that is dismissed. It's rendered moot now. It should be dismissed.

THE COURT: If you can get them to change, they may be able to extend your time. There's some question about whether you can get an extension after the event. But that's not before me. Thank you. Submit an order, please, and a judgment of dismissal, in case you want to take an appeal.

(End)

42 USCA s 405

(g) Judicial review

Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the United States District Court for the District of Columbia. As part of the Commissioner's answer the Commissioner of Social Security shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing. The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive, and where a claim has been denied by the Commissioner of Social Security or a decision is rendered under subsection (b) of this section which is adverse to an individual who was a party to the hearing before the Commissioner of Social Security, because of failure of the claimant or such individual to submit proof in conformity with any regulation prescribed under subsection (a) of this section, the court shall review only the question of conformity with such regulations and the validity of such regulations. The court may, on motion of the Commissioner of Social Security made for good cause shown before the Commissioner files the Commissioner's answer, remand the case to the Commissioner of Social Security for further action by the Commissioner of Social Security, and it may at any time order

additional evidence to be taken before the Commissioner of Social Security, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding; and the Commissioner of Social Security shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm the Commissioner's findings of fact or the Commissioner's decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which the Commissioner's action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision. The judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Commissioner of Social Security or any . . .

20 C.F.R. § 404.1715

CODE OF FEDERAL REGULATIONS
TITLE 20--EMPLOYEES' BENEFITS
CHAPTER III--SOCIAL SECURITY ADMINISTRATION
PART 404--FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950- )
SUBPART R--REPRESENTATION OF PARTIES
Current through September 1, 1998; 63 FR 46596

§ 404.1715 Notice or request to a representative.

(a) We shall send your representative--

(1) Notice and a copy of any administrative action, determination, or decision; and

(2) Requests for information or evidence.

**(b) A notice or request sent to your representative, will have the same force and effect as if it had been sent to you.**

<General Materials (GM) - References, Annotations, or Tables>

20 C. F. R. § 404.1715

20 CFR s 404.982

APPEALS COUNCIL REVIEW
Current through January 1, 1999; 63 FR 72352

§ 404.982 Extension of time to file action in Federal district court.

Any party to the Appeals Council's decision or denial of review, or to an expedited appeals process agreement, may request that the time for filing an action in a Federal district court be extended. The request must be in writing and it must give the reasons why the action was not filed within the stated time period. The request must be filed with the Appeals Council, or if it concerns an expedited appeals process agreement, with one of our offices. If you show that you had good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, we use the standards explained in § 404.911.

<General Materials (GM) - References, Annotations, or Tables>

20 C. F. R. § 404.982

20 CFR § 404.982

END OF DOCUMENT

DEPARTMENT OF HEALTH AND HUMAN SERVICES 5D16G30 4/25/96
SOCIAL SECURITY ADMINISTRATION OFFICE OF HEARINGS AND APPEALS

Form Approved
OMB No. 0960-0277

# REQUEST FOR REVIEW OF HEARING DECISION/ORDER

*(Take or mail original and all copies to your local Social Security office)*

See Privacy Act Notice on Reverse

CLAIMANT: JEANNE FAINELLA

WAGE EARNER (Leave blank if same as above):

SOCIAL SECURITY NUMBER: 021-32-1717

SPOUSE'S NAME AND SOCIAL SECURITY NUMBER (Complete ONLY in Supplemental Security Income Case)

NAME: SSN:

(Check ONE) Initial Entitlement ☐ Termination or other Postentitlement Action ☐

Type Claim (Check ONE)

| | | |
|---|---|---|
| Retirement or Survivors ..... | Only | ☐ (RSI) |
| Disability, Worker or Child ..... | Only | ☒ (DWC) |
| Disability, Widow or Widower ..... | Only | ☐ (DWW) |
| Health Insurance, Part A ..... | Only | ☐ (HIA) |
| SSI, Aged ..... | Only ☐ (SSIA) With Title II Claim | ☐ (SSAC) |
| SSI, Blind ..... | Only ☐ (SSIB) With Title II Claim | ☐ (SSBC) |
| SSI, Disability ... | Only ☐ (SSID) With Title II Claim | ☐ (SSDC) |
| Other (Specify) | | |

I disagree with the action taken on the above claim and request review of such action by the Appeals Council of the Office of Hearings and Appeals. My reasons for disagreement are:

Nature of disease was misunderstood; medical evidence was grossly misinterpreted by Administrative Law Judge.

**ADDITIONAL EVIDENCE**

Any additional evidence which you wish to submit must be either attached to this form or forwarded within 15 days to the Appeals Council at the address shown below. It is important that you write your Social Security number on any letter or material you send us. Where the evidence is not submitted within 15 days of this date, or within any extension of time granted by the Appeals Council, the Council will proceed to take its action based on the evidence of record.

Knowing that anyone making a false statement or representation of a material fact for use in determining the right to payment under the Social Security Act commits a crime punishable under Federal law, I certify that the above statements are true.

Signed by: (Either the claimant or representatives should sign—Enter addresses for both)

| SIGNATURE OR NAME OF CLAIMANT'S REPRESENTATIVE | CLAIMANT SIGNATURE |
|---|---|
| ☒ ATTORNEY ☐ NON-ATTORNEY<br>Frank H. Dalle Donne | Jeanne Blumenfeld |
| STREET ADDRESS<br>342 Madison Ave. Suite 1417 | STREET ADDRESS<br>116 Hewes St. |
| CITY, STATE, AND ZIP CODE<br>New York, N.Y. 10173. | CITY, STATE, AND ZIP CODE<br>Elkins Pk 19027 |
| AREA CODE AND TELEPHONE NUMBER<br>212-599-3844 | DATE: 4/30/96 (Claimant should not fill in below this line) |
| | AREA CODE AND TELEPHONE NUMBER<br>718-858-3019 |

**TO BE COMPLETED BY SOCIAL SECURITY ADMINISTRATION**

Is this request filed timely? ☐ Yes ☐ No

If "NO" is checked: (1) attach claimant's explanation for delay; (2) attach any pertinent letter, material or information in Social Security Office.

**ACKNOWLEDGEMENT OF RECEIPT OF REQUEST FOR REVIEW OF HEARING DECISION/ORDER**

This request for Review of Hearing Decision/Order was filed on _____ at _____

The APPEALS COUNCIL will notify you of its action on your request.

APPEALS COUNCIL
OFFICE OF HEARINGS AND APPEALS, SSA
5107 Leesburg Pike
Falls Church, VA 22041-3255

For the Social Security Administration:

SIGNATURE BY:

TITLE

STREET ADDRESS

CITY

STATE ZIP CODE

SERVICING SOCIAL SECURITY OFFICE CODE

Form HA-520-U5 (5-93)
Destroy old stock

CLAIMANT

BEST AVAILABLE COPY